

Testimony on HB 205, Senate Natural Resources and Energy Committee  
Submitted by Vivian Drake, 7463 Cactus Flats Drive, Helena, MT 59602

Cell phone: 406-431-7210

Mr. Chairman and Members of the Committee:

My name is Vivian Drake. I reside at 7463 Cactus Flats Drive, north of Helena. I hold both civil and hydrogeological engineering degrees, as well as a second master's degree in Land Resources and Environmental Sciences from Montana State University. I have worked in the field of groundwater science for over 15 years, including administering the Lewis & Clark County Water Quality Protection District for 9 of those years. Also, I am one of over 100 North Hills Controlled Ground Water Area Petitioners, and in fact, authored the majority of that original Petition.

On July 23, 2000, the Helena Independent Record published an article I wrote with the heading "DNRC not doing job". The initial event that prompted the article was coming home to find not one, but two drilling rigs in my neighbors' yards. This was in addition to the knowledge that my well was fast becoming unusable as the water table had dropped below the pumping level, and my family was faced with drilling a new well. Jack Stults, Water Resources Division Administrator at the time, responded in both a newspaper article and a letter to me recommending the Controlled Groundwater Area petition process as a way to address ground water problems in the North Hills. And I must admit that the petition process appeared to be working until the change in administration in 2004. Prior to 2004, Department staff assisted me in arranging a public informational meeting about the North Hills CGA, provided guidance as I prepared our CGA petition, and set dates for the follow-on activities required by the statutes. Even the Department Environmental Assessment was a reasonable document that provided information for what we, as petitioners, believed would be a fair and impartial process.

However, from the time of the administration change and appointment of the new DNRC director, the process has significantly deteriorated. ***Now this bill attempts to destroy the process entirely.*** While the current CGA process has been manipulated by the Department into something extremely difficult and almost impossible to accomplish, I would point out that this is the **ONLY** mechanism available to citizen groups to protect ground water supplies and limit future groundwater appropriations in areas experiencing water supply and quality problems.

With regard to this bill, under section (2)(a), the process would require 51% of permitholders, certificate holders, and claimants in a proposed controlled ground water area to sign the CGA petition. You can't even get 51% of the population to vote in some elections! If this legislation would have been in effect during our North Hills effort, we would have had to gather hundreds of signatures to even reach the first stage in the process. It simply would not have happened.

This bill goes on to require not only "substantial credible" information, but "scientific data" showing that petition criteria is met. Who gets to decide which "scientific data" is credible? The DNRC? How can an average group of citizens possibly be able to put forth the

"scientific data" that the DNRC will use to make a determination that a petition is "correct and complete". However, they can show there is a problem. A significant part of the CGA process is to show the DNRC that there are water availability or water quality problems occurring, and it is the Department's responsibility to gather and analyze the scientific data necessary to determine if a problem does exist. It appears from this legislation that they really don't want to know.

What HB 205 does is move what was originally intended as a citizen process into a "contested case" trial setting. Why bother? Let's just go directly to court. The process outlined in this bill won't work, will cost individual citizens thousands of dollars in attorneys fees, and the water issues that citizens have every right to expect the Department to address, simply won't be. Controlled ground water area legislation was originally put forth to allow a minority of citizens the ability within a workable process to protect their water. This bill would deny those citizens their rights as well as deny them due process, unless they are very wealthy and have nothing but time on their hands.

In addition to my experience with the North Hills CGA process, I was an expert witness in the Smith Valley CGA hearing last year. It was, quite frankly, a "kangaroo court". The hearing process turned from what should have been a public hearing with proponents and opponents each stating their case, as happened in the North Hills hearing, to a contested case hearing where one side, the developers and realtors, had three aggressive attorneys who objected to nearly every point the petitioners tried to make and excluded evidence critical to the ultimate decision. And the hearings examiner allowed that to happen. I've appeared as an expert witness in a number of court cases, and I've never seen such a travesty of justice and complete disregard for what should have been an open public hearing. Again, CGAs are the only legislatively sanctioned mechanism for citizens to bring to the attention of DNRC problems that are occurring with water availability and quality in their neighborhoods.

Rapid growth and anthropogenic stress on natural resources poses unique dangers. Often by the time damage can be detected and measured it is irreparable and progressive. The CGA process was intended to give citizens a chance to raise a red flag, point out problems, and allow the agency to take timely and prudent action to protect the resource. HB 205 is a clear attempt to make the CGA process so onerous that no citizen in their right mind would attempt it. Ultimately, it is the Department's attempt to gain absolute control, effectively killing the only citizen-based process designed to protect Montana's waters.

According to the DNRC website, the Department's Mission is *"To help ensure that Montana's land and water resources provide benefits for present and future generations."* And the mission of the Water Rights Bureau is *"To assure the orderly appropriate and beneficial use of Montana's scarce waters"*. If the DNRC were fulfilling these missions, I wouldn't be standing here asking you to kill this bill.

HB 205 is an unconscionable attempt to shift the burden of protection of scarce groundwater resources to an oppressed segment of the population who are already suffering from the loss or potential loss of those scarce resources. HB 205 virtually guarantees that decisions will be made on the basis of money and not scientific merit. This bill must be killed.

There is also a financial burden to Montana citizens that has not been addressed. During the North Hills petition process, I prepared a chart showing the costs to individual citizens who had to replace their wells prior to the North Hills temporary designation as a CGA. That cost, very conservatively, was over \$210,000 for replacement of 35 documented dry wells. Since the North Hills temporary CGA designation, an additional 30 wells have gone dry, with another estimated \$250,000 spent to replace those wells – where they could be replaced. Conservatively, North Hills citizens have expended over three-quarter of a million dollars to replace wells, install DNRC mandated infrastructure to collect data that the Department has ignored. Once again, DNRC wants citizens to pay for work that the Department is clearly mandated to do. This proposed bill adds insult to injury. HB 205 is clearly an attempt to kill the CGA process, a citizen process, and this bill deserves to be killed and that is what I urge this committee to do. Thank you.